

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42391 of 2023

Applicant :- Vikram Balmik

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikas Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Vikas Tiwari, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Vikram Balmik seeking his enlargement on bail in Case Crime No. 209 of 2023, under Sections 376, 457, 504, 506 IPC and Section 67 I.T. Act, Police Station-Kalpi, District-Jalaun during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 26.06.2023, a delayed FIR dated 03.07.2023 was lodged by the first informant-Mahendra Kumar (brother of the prosecutrix) and was registered as Case Crime No. 209 of 2023, under Sections 376-D, 452, 506 IPC and Section 67 I.T. Act, Police Station-Kalpi, District-Jalaun. In the aforesaid FIR, 4 persons namely - (1) Chandan Balmik, (2) Vikram Balmik (applicant herein), (3) Daulat Balmik and (4) Arjun Balmik have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that on 26.06.2023 at around 12:30 A.M., named accused entered the house of the first informant and thereafter, dislodged the modesty of the sister of the first informant i.e. the prosecutrix. The FIR further records that certain obscene photographs and video of the prosecutrix were made viral subsequently.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on

record at page 32 of the paper book. The prosecutrix in her aforesaid statement has stated that she became acquainted with the applicant about 2 years ago. Thereafter telephonic conversation was made. Subsequently, the parties entered into love affair with each other. However, by extending false promise of marriage, applicant dislodged the modesty of the prosecutrix, contrary to her wishes repeatedly. However, in the later part of her statement, the prosecutrix has stated that on 26.06.2023, the applicant entered the house of the prosecutrix at around 12:30 A.M. when her mother and brother were not present. Thereafter, the applicant is alleged to have dislodged the modesty of the prosecutrix and snapped certain obscene photographs of the prosecutrix. Subsequently, the said obscene material was made public by making it viral on the face book. Subsequent to above, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has rejoined the later part of her statement under Section 161 Cr.P.C. However, the Doctor, who medically examined the prosecutrix, did not find any injury on her body so as to denote commission of deliberate or forceful sexual assault. With regard to the private part of the prosecutrix, the Doctor has, however, opined as follows:-

"Hymen - Hymen is torn"

7. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. Same is on record at page 65 of the paper book. The prosecutrix in her aforesaid statement has reiterated her earlier statement under Section 161 Cr.P.C. During course of investigation, Investigating Officer recovered the material regarding the age of the prosecutrix. As per the certificate issued by the institution where the prosecutrix had studied, the date of birth of the prosecutrix recorded in the school record is 10.05.2001. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 26.06.2023. As such, the prosecutrix was aged about 22 years, 1 month and 16 days on the date of occurrence. Investigating Officer further examined the first informant and the following witnesses namely - (1) Mahendra (Informant), (2) Sant Ram (Father of victim), (3) Gyanwati (Mother of victim), (4) Km. Rachna (Victim), (5) Vimal (villager), (6) Raja Ram Dubey, (7) Jagdish Ahirwar, (8) Pannalal Dubey, (9) Dr. Priyam Yadav, (10) Badelal, (11) Chete Lal, (12) Chotey Dubey, (13) Babu Singh & (14) Arvind Kumar (Principal) under Section 161 Cr.P.C. As per the statements of witnesses so examined, the obscene photographs/video of the prosecutrix were made viral on the face book, on account of which, the villagers

came to know of the same. Applicant was arrested on 05.07.2023. From the person of applicant, a mobile phone and Aadhar was recovered. Upon examination, the mobile phone of the applicant contained obscene photographs of the prosecutrix also. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 14.07.2023 whereby applicant-Vikram Balmik has been charge sheeted under Sections Sections 376, 457, 504, 506 IPC and Section 67 I.T. Act whereas the other 3 named accused have been charge sheeted under Sections 504, 506 IPC and Section 67 I.T. Act.

8. Learned counsel for applicant contends that though the applicant is named as well as charge sheeted accused yet he is liable to be enlarged on bail. On the date of lodging of the FIR, the prosecutrix was major. As per the statements of the prosecutrix as noted above, the prosecutrix was in consensual relationship with the applicant as she was having a love affair with the applicant. He, therefore, contends that the prosecutrix is a willing and consenting party. As such, no offence as complained of can be said to have been committed by the applicant. On the above premise, it is thus urged that applicant is liable to be enlarged on bail.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 05.07.2023. As such, he has undergone more than 4 and 1/2 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he, therefore, submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He contends that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. It is true that the prosecutrix was having love affair with the applicant but she never gave her consent for dislodging her modesty. As such, the modesty of the prosecutrix was dislodged by the applicant forcibly i.e. without the consent of the prosecutrix. It

is further contended that the applicant not only dislodged the modesty of the prosecutrix but also snapped obscene photographs of the prosecutrix and further prepared an obscene video of the prosecutrix. The said material was made viral by placing it on the face book. It is on account of above that the villages came to see the said obscene material. Furthermore, the said material was found in the mobile phone of the applicant which was recovered by the Investigating Officer. The learned A.G.A. has referred to C.D. Parcha No.-11 of the case diary to show that obscene photographs of the prosecutrix were given to the Investigating Officer by the first informant also. They have been made part of case diary. The confessional statement of the accused also admits the fact regarding snapping of obscene photographs of the prosecutrix and making this viral. On the above premise, the learned A.G.A. contends that irrespective of the fact that the prosecutrix is major and she was in love relationship with the applicant yet he does not deserve any sympathy of this Court. Consequently, he submits that the bail application is liable to be rejected.

11. When confronted with above, the learned counsel for applicant could not overcome the same.

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that the objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant with reference to the record, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

13. As a result, present application for bail fails and is liable to be rejected.

14. It is accordingly **rejected**.

Order Date :- 24.11.2023

Vinay